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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

LESLIE KLEIN,

Debtor and Debtor in Possession,

Case No. 2:23-bk-10990-SK

Chapter 11 Proceeding

**REPLY TO DEBTOR’S OPPOSITION
TO MOTION TO DISALLOW
DEBTOR’S CLAIM OF HOMESTEAD
EXEMPTION PURSUANT TO 11 U.S.C.
§ 522(q)**

Date: May 17, 2023
Time: 9:00 a.m.
Place: Courtroom 1575
U.S. Bankruptcy Court
255 E. Temple Street
Los Angeles, CA 90012

**TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES BANKRUPTCY JUDGE,
THE DEBTOR AND HIS COUNSEL, AND ALL OTHER INTERESTED PARTIES:**

Judgment creditors Erica and Joseph Vago (“Movants”) hereby submit their reply (“Reply”) to Debtor’s Opposition (“Opposition”) [Docket No. 106] to Motion to Disallow Debtor’s Claim of Homestead Exemption Pursuant to 11 U.S.C. § 522(q) (“Motion”) and respectfully represent as follows:

**I. THE OPPOSITION ADMITS THE FUTILE, FRIVOLOUS AND BAD FAITH
NATURE OF THE FILING OF THE BANKRUPTCY CASE**

In the Opposition, Debtor contends that the Court must ignore the plain language of Section 522(q)(1)(B)(ii) of the Bankruptcy Code and read the word “or” to mean “and” so that the statute’s application is limited to a debtor’s fraud in connection with the purchase or sale of securities. (*See* Opposition, at 7:16-17.) Debtor also cites the universally rejected decision, *In re McNabb*, 326 B.R. 785 (Bankr. D. Arizona 2005) for the proposition that debtors do not actually “elect” to exempt anything, so Sections 522(p) and (q) of the Bankruptcy Code magically never apply in the State of California. (*See* Opposition, at 4-6.) Finally, after filing a Chapter 11 bankruptcy case (“Bankruptcy Case”) to generate and dedicate net income sufficient to reorganize his debts, Debtor now contends that he “is at the end of his career with diminished earning capacity” (*See* Opposition, at 9:22), thus admitting the futile, frivolous, and bad faith nature of the filing of the Bankruptcy Case. For the reasons set forth herein as well as in the Motion, Movants request that the Court enter an order disallowing Debtor’s claimed homestead exemption in any amount exceeding \$189,050.

**II. THE LAW IS CLEAR THAT THE DEBTOR’S HOMESTEAD EXEMPTION
SHOULD NOT BE MORE THAN AN INFLATION-ADJUSTED \$189,050**

The language of Section 522(q)(1)(B)(ii) is clear:
(q)

(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000 if—

...

(B) the debtor owes a debt arising from—

...

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933

11 U.S.C. 522(q)(1)(B)(ii) (emphasis added). If the Debtor owes a debt arising from fraud, deceit, or manipulation in a fiduciary capacity, his homestead exemption will be no more than an inflation-adjusted \$189,050.

A. The Court Must Not Read “Or” as used in Section 522(q)(1)(B)(ii) to Mean “And” as Debtor Asserts

The Opposition dedicates page after page to an alleged link between Section 522(q) and Section 523(a)(19),¹ such that if Section 523(a)(19) is worded narrowly, Section 522(q) must also be read narrowly as a result. However, that argument (1) has nothing to do with the ultimate holding in the case of *In re Presto*, 376 B.R. 554, 592 (Bankr. S.D. Tex. 2007) and, (2) is contrary to Supreme Court directives on statutory interpretation.

To be clear, the bankruptcy court in *Presto* held that the proper interpretation of Section 522(q)(1)(B)(ii) is as follows:

[T]he Court interprets this provision to require that the "fraud, deceit, or manipulation" must have occurred while the Debtor was acting either in a fiduciary capacity *or* in connection with the purchase or sale of any registered security.

In re Presto, 376 B.R. 554, 592 (Bankr. S.D. Tex. 2007) (emphasis added) (internal citations omitted). This holding is noncontroversial and consistent with binding precedent governing the Court's interpretation of statutes: When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Debtor has not shown in any way why Section 522(q)(1)(B)(ii) is ambiguous, nor could he as the statute is plain on its face and must be applied as written.

¹ While the *Presto* court did note a similarity between Section 522(q)(1)(B)(ii) and 523(a)(19), that similarity had no impact on that court's holding. Whatever the importance of Section 523(a)(19), Congress exacted an *even harsher* penalty for those who commit fraud in a fiduciary capacity. Section 727(a)(12) permits the Court (on motion) to deny a debtor's discharge if the Court has reason to believe Section 522(q)(1) may be applicable to debtor and there is any proceeding pending where debtor may be held liable for a debt described in Section 522(q)(1)(B). See 11 U.S.C. § 727(a)(12). Thus, any similarity between Sections 522(q)(1)(B)(ii) and 523(a)(19) is most likely coincidental. Section 727(a)(12) shows that Congress has categorically withdrawn much of the benefits of bankruptcy from certain bad actors, including Debtor.

11 U.S.C. § 522(b)(1) (emphasis added). Thus, debtors may only exempt property from a bankruptcy estate by “electing” to do so under an applicable statute. *Law v. Siegel* only further supports the conclusion that *McNabb* is anomalous and incorrectly decided because “words repeated in different parts of the same statute generally have the same meaning.” *Law v. Siegel*, 571 U.S. at 422. Thus, if Section 522(b)(1) states that a debtor exempts property by “electing” exemptions, then he must also “elect to exempt” his residence under Section 522(b)(3)(A) when he claims a California homestead exemption.

8 **C. An Evidentiary Hearing is not Required to Determine that Debtor Does Not**
9 **Need More Than \$189,050 for His Support**

10 Generally, bankruptcy courts have “wide” discretion in deciding whether to take oral
11 testimony at an evidentiary hearing. *United Commercial Insurance Service, Inc. v. Paymaster*
12 *Corp.*, 962 F.2d 853, 858 (9th Cir. 1992). Even when making “highly factual” determinations, a
13 bankruptcy court does not abuse its discretion by not conducting an evidentiary hearing. *C-TC 9th*
14 *Ave. Pshp. v. Norton Co. (In re C-TC 9th Ave. Pshp.)*, 113 F.3d 1304, 1312-13 (9th Cir. 1997).

15 Here, Debtor is not credible at all as he recently and conveniently changes his tale from
16 that of a successful attorney who can reorganize his debts to an attorney at the end of his career.
17 The Court can fully consider the Declarations of Erica Vago and Leslie Klein and assess their
18 relative weight. All that an evidentiary hearing would do is needlessly increase the Movants’ legal
19 costs and subject Debtor to even more withering scrutiny under cross-examination.

20 Tellingly, the only reason Debtor wants an evidentiary hearing is because “[i]n the city of
21 Los Angeles, it will be very difficult for the Debtor to buy a new home for \$678,391.00.”
22 (Opposition, at 9:23-25.) Respectfully, less than 10% of California’s total population lives in Los
23 Angeles² and it is one of California’s most expensive locales. Nothing in Section 522(q) or
24

25
26 ² Compare U.S. Census Bureau Quickfacts: Los Angeles city,
27 <https://www.census.gov/quickfacts/losangelescitycalifornia> (last visited May 10, 2023) with U.S. Census Bureau
Quickfacts: California, <https://www.census.gov/quickfacts/CA> (last visited May 10, 2023).

1 similar statutes entitles the Debtor to own a home in the city of Los Angeles. As such, there is no
2 basis to hold an evidentiary hearing.

3 **III. CONCLUSION**

4 **WHEREFORE**, based upon the foregoing and for the reasons stated in the Motion,
5 Movants respectfully requests the Court enter an Order (i) disallowing the Debtor's Homestead
6 Exemption in any amount exceeding \$189,050 and (ii) granting any other relief that the Court
7 deems just and proper under the circumstances of this case.

8 Respectfully submitted,

9 Dated: May 10, 2023

GOE FORSYTHE & HODGES LLP

10 By: /s/ Brandon J. Iskander

11 Robert P. Goe

Brandon J. Iskander

12 Attorneys for Movants Erica Vago and Joseph
13 Vago
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 17701 Cowan, Bldg. D., Suite 210, Irvine, CA 92614

A true and correct copy of the foregoing document entitled (*specify*): **REPLY TO DEBTOR'S OPPOSITION TO MOTION TO DISALLOW DEBTOR'S CLAIM OF HOMESTEAD EXEMPTION PURSUANT TO 11 U.S.C. § 522(g)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 10, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) May 10, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

(*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) May 10, 2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Honorable Sandra R. Klein, USBC, 255 E. Temple Street, Ctrm 1575, Los Angeles, CA 90012
- (delivery suspended, as document under 25 pages)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 10, 2023 Susan C. Stein

Date

Printed Name

/s/Susan C. Stein

Signature

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Mailing Information for Case 2:23-bk-10990-SK

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

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